

**United States Department of Labor
Employees' Compensation Appeals Board**

BONNIE S. PAUL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Deville, LA, Employer**

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**Docket No. 04-496
Issued: June 17, 2004**

Appearances:

*Daniel E. Broussard, Jr., Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 1, 2003, which denied her claim for a low back and right leg condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant had established that she sustained an injury on September 14, 2002, causally related to factors of her federal employment.

FACTUAL HISTORY

On December 2, 2002 appellant, then a 58-year-old distribution window clerk, filed a claim alleging that, on September 14, 2002, while reaching for a drop box, her right leg "snapped" and she experienced pain. Appellant went to an emergency room and characterized her injuries as "torn muscle ligaments and swelling in right leg, walking and standing are very

difficult and painful.” Appellant stopped work on November 20, 2002 and did not return. The employing establishment controverted appellant’s claim.

The employing establishment postmaster stated that on November 15, 2002 he had a meeting with appellant who wanted to fill out an accident report for something that had happened on September 14, 2002. She told him that “while walking to the drop box she felt a burning in her leg. That night she went to the emergency room because she was concerned about a blood clot.” The postmaster asked appellant twice if there had been an accident at work and both times she replied “no.” He noted that appellant brought him work restrictions from her physician that stated that she needed assistance in lifting and bending.

A note from Shawna L. Shinell, coworker, received on December 10, 2002 indicated that on November 25, 2002 appellant came to the employing establishment to talk about a September 14, 2002 incident when she was walking over to the drop box and felt a really bad sting on the back of her leg which appellant thought might be a blood clot. Ms. Shinell noted that appellant was asked whether there was an accident and she replied “no,” that she was just walking and it happened and she wanted an accident report filed.

By letter dated December 23, 2002, the Office advised appellant that the evidence submitted was insufficient to support her claim and to submit additional information.

Appellant submitted a note from Dr. Douglas J. Gawlrey, a physician, who stated that appellant was having problems with her back and would need assistance at work with lifting and bending.

Appellant also submitted a series of medical treatment notes from Dr. Gawlrey, who noted that on October 23, 2002 she complained of pain in her right calf proximally which began several months earlier. Dr. Gawlrey stated that appellant worked on her feet all day and had a history of hypertension. He noted that appellant had “had trouble on and off with her calf since that time.” Appellant continued to experience pain with walking and standing in the area of the right calf and walking was a definite aggravating factor, but appellant also cited getting out of a car as causing pain. Dr. Gawlrey found tenderness to palpation over the medial head of the gastrocnemius, normal peripheral pulses, and no apparent difference in calves when palpating over the area in terms of firmness. He diagnosed “probable gastrocnemius interstitial tear with protracted symptomatology” and recommended fast fit compression hose below the knee and a Doppler examination.

In a November 6, 2002 note, Dr. Gawlrey reported improvement in appellant’s leg, but noted pain in her back and right hip radiating into her right leg. He noted that straight leg raising was negative, reflexes were normal, her calf was soft, with tenderness over the right trochanteric bursa.

In a November 20, 2002 note, Dr. Gawlrey reported that appellant had definite improvement in her right calf pain, but noted that a limiting factor was her lower back and right hip pain. In a November 20, 2002 report, Dr. Gawlrey noted the nature of injury as “R[ight] calf muscle tear/arthritis lumbar spine” and indicated that appellant was unable to work for

approximately four weeks. On December 19, 2002 he indicated that appellant's symptoms persisted and she complained of bilateral trochanteric pain. Physical examination revealed tenderness to palpation over the trochanteric bursa, right worse than left. Dr. Gawlrey diagnosed "trochanteric bursitis, bilateral, right worse than left."

On January 14, 2003 appellant replied to the Office's questions, noting that as she was reaching for the drop box her right leg snapped which stopped her in her tracks for a minute or two. She stated that her leg gave away, but that she did not fall to the floor. She submitted preinjury information and diagnostic medical reports.

By decision dated January 23, 2003, the Office denied appellant's claim finding that she failed to establish fact of injury. The Office found that the medical evidence did not establish that the claimed medical condition resulted from the accepted event.

On January 27, 2003 the Office received a supplemental narrative letter from the postmaster, who detailed appellant's history of medical problems and her need to attend aqua therapy/water aerobics during the workday. He was unable to schedule appellant in accordance with her work restrictions, and noted that she stated that, while walking across the workroom floor, she felt a burning sensation in her leg. The postmaster noted that appellant made no mention of any accident or of any diagnosis given during her emergency room visit.

On February 24, 2003 appellant was diagnosed as having hypertension, chronic renal insufficiency and polycystic kidneys.

On March 3, 2003 the Office received a letter from appellant, who alleged two accidents, one on Saturday, August 15, 1998 and one on Saturday, September 14, 2002. She stated that she could not do what three or more people do during the week without stress and strain on her body. Appellant kept working after the accidents and did not know about the muscle tear until November 2002.

On July 11, 2003 appellant requested reconsideration of the January 23, 2003 decision. She resubmitted multiple copies of the evidence previously submitted to the record and a new statement.

In an April 8, 2003 report, Dr. Douglas Gamburg, a Board-certified neurosurgeon, found that she had a probable gastrocnemius interstitial tear, and noted a diagnosis related to the right hip. He checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity. Dr. Gamburg opined that appellant was unable to work at that time and was disabled for an undetermined period.

By decision dated October 1, 2003, the Office denied modification of the January 23, 2003 decision. The Office found that appellant had not submitted sufficient medical opinion evidence addressing the causal relationship between her claimed medical condition and the implicated factor or incident of employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established.

Fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ This component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ A consistent history of the injury as reported on medical records, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident. In this case, appellant did not provide a detailed history of injuring her right leg on her forms, but in fact denied several times to her supervisor and to coworkers that she had experienced any injurious event or accident. Appellant claimed that she was just walking when her leg pain occurred. Further, she did not stop work until November 20, 2002 and then did not return.

The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence. To establish a causal relationship between the condition and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁶

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion must be one of reasonable medical certainty

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁴ For a detailed discussion of the components of an appellant's burden of proof in establishing fact of injury, see *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. §10.5(a)(14).

that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate factual and medical background.⁷

Merely checking “yes” to a form question on whether there was a causal relationship with employment is conclusory, and that, when unaccompanied by a rationalized medical explanation, it is insufficient to establish causal relationship.⁸

ANALYSIS

The Office accepted that the September 14, 2002 employment incident occurred as alleged, that appellant felt her leg snap while she was walking to the drop box. The Office found, however, that the medical evidence submitted did not establish that appellant sustained an injury causally related to that incident.

No emergency room records from the evening of the incident were submitted.

Appellant did submit several medical treatment notes from Dr. Gawlrey which provided differing histories for her symptomatology. Dr. Gawlrey stated that on October 23, 2002 appellant complained of right calf pain which had begun several months earlier. This report did not list a history of injury on September 14, 2002 as alleged. He also noted that appellant’s medications were changed about two years prior and that she had trouble on and off with her calf since that time. This report does not support that appellant had a September 14, 2002 right calf injury, but attributed her calf condition to the medication alteration two years earlier. Dr. Gawlrey noted that appellant experienced right calf pain aggravated by walking and from getting out of a car. This does not implicate the September 14, 2002 employment incident as causative.

Other medical progress notes from Dr. Gawlrey addressed appellant’s ongoing symptomatology but did not provide further opinion as to causal relation. Therefore, these medical treatment notes are not sufficient to establish appellant’s claim.

Following a work up on October 23, 2002, Dr. Gawlrey speculated that appellant had a probable gastrocnemius interstitial tear with protracted symptomatology. As this opinion was couched in speculative terms as to the condition found, it is of diminished probative value. On November 20, 2002 Dr. Gawlrey diagnosed right calf muscle tear/arthritis lumbar spine but he did not provide any opinion as to the cause of these findings. As this report does not address causal relationship with appellant’s employment, it does not establish that appellant sustained injury related to the September 14, 2002 employment incident. On December 19, 2002 Dr. Gawlrey diagnosed bilateral trochanteric bursitis, right worse than left, but again did not address causal relationship with any specific discussion of appellant’s employment incident. This report does not establish an injury due to the September 14, 2002 incident.

⁷ See *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999); *Judith J. Montage*, 48 ECAB 292 (1997).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994).

A report dated February 24, 2003 diagnosed appellant as having hypertension, chronic renal insufficiency and polycystic kidneys, but no relationship with her employing was identified. Therefore, this report does not establish appellant's September 14, 2002 injury claim.

Dr. Gamburg evaluated appellant, found a "probable" gastrocnemius interstitial tear but diagnosed only a right hip problem, and determined that her condition was caused or aggravated by factors of her federal employment. However, he failed to explain on what basis the evidence formed his conclusion on causal relationship. He provided only a check in a "yes" box, without further information, to implicate a causal relationship to work factors. This is insufficient to establish a causal relationship of the diagnosed right hip condition to the September 14, 2001 incident.

There is insufficient medical evidence to establish that appellant sustained a right leg condition causally related to the September 14, 2002 employment incident. She has failed to meet her burden of proof to establish her claim.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an identifiable, compensable medical condition, causally related to a September 14, 2002 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 1 and January 23, 2003 be and hereby is affirmed.

Issued: June 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member